United Nations

AT

Administrative Tribunal

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7 August 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 892

Case No. 940: SITNIKOVA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay, Vice-President; Mr. Victor Yenyi Olungu;

Whereas, on 22 August 1996, Iouliia Sitnikova, a staff member of the United Nations Social and Economic Commission for Asia and the Pacific (hereinafter referred to as ESCAP), filed an application requesting the Tribunal, inter alia:

"...

[i] ... to rescind GSCARC's decision declaring the appeal non-receivable ...

[ii] [To order the Respondent] to provide the Applicant with the complete text of CCS' [Compensation and Classification Service] initial classification of her post -- in particular, CCS' point matrix ratings/benchmark calculations. ...

[iii] ... to rescind the decision to classify the post encumbered by the Applicant at the GS-4 level ..."

Whereas, on 7 August 1997, the Tribunal informed the parties that it would defer consideration of the case until the Secretary-General's receipt of the findings of the Bangkok General Service Classification Appeals and Review Committee (GSCARC) on the

classification of the Applicant's post, and requested that the Respondent ensure that those procedures be completed by 31 October 1997;

Whereas, on 30 October 1997, the Respondent transmitted to the Tribunal a copy of the GSCARC report, dated 29 October 1997;

Whereas, on 30 June 1998, the Tribunal requested the Respondent to provide an answer on the merits;

Whereas the Respondent filed his answer on the merits on 9 July 1998;

Whereas the Applicant filed written observations on 13 July 1998, which referred to additional pleas, requesting the Tribunal further to find:

> "...
>
> [a] ... [T]hat sufficient grounds exist for considering [the] first decision [of 14 May 1996] null and void or, at least, for ruling that such decision has been de facto nullified and replaced by the decision dated 29 October 1997, which was communicated to the Tribunal on 30 October 1997;
>
> [b] That by proceeding as it had, before the Applicant could address the Tribunal, the Administration ... failed to follow proper procedures;
>
> [c] That even after the Applicant had submitted her application, the Administration (and subsequently, the Respondent), allowed the administrative procedures to be unduly drawn out, waiting more than a year before following the Office of Legal Affairs' very specific instructions to resubmit the case to GSCARC, and waiting until just one day before the deadline set by the Tribunal to communicate the decision of the Executive Secretary of ESCAP concerning the Classification of the Applicant's post.
>
> ..."

Whereas the facts in the case are as follows:

The Applicant entered the service of ESCAP in Bangkok, Thailand, on 3 January 1992, on a two-year fixed term appointment as a Typist, at the GS-7 level. On 3 January 1994, her appointment was extended for eight months and her grade level changed to GS-5

due to the replacement of the nine-level grading system by a seven-level grading system. The Applicant received further extensions of her appointment. On 1 January 1996, her functional title was changed to Text Processing Clerk. At the time of her application, the Applicant held an appointment at the GS-5, step X level.

On 25 November and 8 December 1994, the Applicant appealed to the Bangkok GSCARC the initial classification decision for her post. On 14 May 1996, the Deputy Executive Secretary, ESCAP, notified the Applicant of GSCARC's recommendation that her appeal was not receivable "since it did not provide additional information as called for by the provisions of the governing administrative instruction [ST/AI/398]". She further informed her that the Executive Secretary, ESCAP, had decided to maintain the classification of her post at the GS-4 level. On 6 June 1996, the Applicant requested the Secretary-General to review that administrative decision. In case the decision were maintained, the Applicant requested the Secretary-General's agreement to submit her case directly to the Tribunal. Not having received a response to her request for review, on 22 August 1996, the Applicant filed the application to the Tribunal referred to earlier.

On 7 August 1997, the Tribunal informed the parties of its decision to defer consideration of the application until the Secretary-General received the recommendation of GSCARC on the merits of the appeal. On 22 October 1997, GSCARC recommended that the initial classification of the Applicant's post should remain at the GS-4 level. On 29 October 1997, GSCARC's recommendation was endorsed by the Executive Secretary of ESCAP.

Whereas the Applicant's principal contentions are:

1. The decision to maintain the initial classification of the Applicant's post at the GS-4 level is erroneous.

2. The Administration violated the Applicant's rights by delays in proceeding with the Applicant's appeal to GSCARC and in notifying the Applicant of the decisions on her appeal. The Applicant is entitled to compensation for these procedural irregularities.

Whereas the Respondent's principal contention is:

The Applicant's appeal against the classification of her post was properly considered by GSCARC which delivered a reasoned recommendation, the acceptance of which did not violate the rights of the Applicant.

The Tribunal, having deliberated from 30 June to 7 August 1998, now pronounces the following judgement:

I. The Applicant initially appealed a decision by the Executive Secretary of the United Nations Social and Economic Commission for Asia and the Pacific (ESCAP) dated 14 May 1996, to maintain the classification of her post at the GS-4 level, in the light of a recommendation by the ESCAP General Service Classification Appeals and Review Committee (GSCARC), that the Applicant´s appeal "was not receivable since it did not provide additional information as called for by the provisions of the governing administrative instruction [ST/AI/398]". On 6 June 1996, the Applicant requested administrative review of this decision, as well as the Secretary-General's agreement to file an appeal directly to the Administrative Tribunal. In the absence of a reply, on 22 August 1996, the Applicant lodged an appeal with the Administrative Tribunal. Following receipt of the application, on 19 September 1996, the Respondent informed the Tribunal that, in view of the fact that this and similar cases were being referred back to GSCARC for a review on the merits, he did not agree to direct submission of the case at this stage to the Tribunal, in the absence of a recommendation by GSCARC. One year later, on 7 August 1997, as no further action had been taken by GSCARC, the Tribunal ordered the Respondent to ensure that GSCARC review the classification of the Applicant's post and complete the classification procedures by 31 October 1997. In its report dated 29 October 1997, GSCARC concluded that "the functions of the post correspond to the classified level of GS-4 level" and recommended "that

the classification decision of 15 September 1994 with respect to the subject post be maintained."

II. In her initial appeal against the classification of her post, by memoranda dated 25 November and 8 December 1994, the Applicant had written to the Acting Executive Secretary of ESCAP, in accordance with ST/AI/398, to lodge an appeal on the grounds that the classification had been inconsistently applied to her case; that it disregarded her career development rights; and that it did not provide any details on the point rating matrix/ benchmark calculations used to classify her post.

In her application to the Tribunal dated 22 August 1996, the Applicant contested the Executive Secretary's decision to maintain the classification of her post at the GS-4 level, based on a recommendation by GSCARC, declaring her appeal not receivable, purely on technical grounds, namely, that she had not provided additional information in accordance with ST/AI/398. She also requested to be allowed to continue the appeals procedure notwithstanding GSCARC's recommendation.

III. Under section 7 of the Statute of the Tribunal:

> "1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal."

By memoranda dated 19 September, 30 September, 25 November 1996 and 15 January 1997, the Respondent made it clear that he did not agree to the direct submission of the case before the Tribunal. Instead, the Respondent remanded the case back to GSCARC, which is the proper appeals body to hear classification issues. On 7 August 1997, the Tribunal ordered the Respondent to ensure that the procedures before GSCARC be

completed by 31 October 1997. While initially there were disagreements between the Administration and the Applicant concerning receivability by GSCARC of her appeal, the Applicant eventually submitted additional information in support of her appeal. GSCARC received her appeal, considered it on its merits, and recommended that the initial classification decision be maintained. The Applicant argues that she never received an official decision from the Assistant Secretary-General for OHRM concerning the classification. In addition, the Respondent did not produce his reply on the merits to the application until 9 July 1998, and then, only after receipt of an order by the Tribunal to do so.

IV. Taking into account that this case has been reviewed twice by GSCARC, that a long period of time has elapsed since the commencement of these procedures, that the Tribunal should ensure that no further procedural delays occur, the Tribunal will consider the facts of this case. The Tribunal notes that on 4 October 1996, the Respondent provided the Applicant with a copy of the points rating that governed the classified grade level assigned to her post, so as to allow her to submit the specific information required by GSCARC and thus to proceed with her appeal before GSCARC on the merits. Although, according to GSCARC, the Applicant conceded that the calculation of the points rating did not appear to support the upgrading of the post, the Applicant argued that the points rating did not reflect the knowledge required for the post.

V. The Tribunal has carefully considered the Applicant´s contention that she was not accorded due process during the appeals procedure regarding the classification of her post. The Tribunal notes that after apparent inaction by the Administration, the Respondent has remedied his initial failure to review the Applicant´s case on the merits. The Tribunal has consistently held that the Secretary-General has discretion in classification matters, and the

Tribunal will not substitute its judgement for that of the Secretary-General and the classification bodies in job classification matters. The Tribunal has determined that, after examination of the case by GSCARC, the Applicant has been accorded due process, and that there has been no improper exercise of the Secretary-General's discretion. (Cf. Judgements No. 396, Waldegrave (1987), No. 541, Ibarria (1991), No. 597, Colayco (1993), and No. 780, Maia-Sampaio (1996)).

VI. However, the Tribunal considers that the Applicant is entitled to compensation due to the inordinate delay of nearly three years, from the time she first attempted to have the classification of her post reviewed until the final decision by the Administration to maintain the classification level of her post at GS-4. Indeed, the Tribunal was required to intervene during the process to set a deadline for the Administration to conduct the required review. As the Tribunal has held in prior cases, "an inordinate delay 'not only adversely affects the administration of justice but on occasions can inflict unnecessary anxiety and suffering to an applicant.'" (Cf. Judgements No. 353, El-Bolkany (1985) and No. 414, Apete (1988)). Such is the case here. The Tribunal therefore assesses compensation for such delay in the amount of $3,000.

VII. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay to the Applicant $3,000 as compensation for the Administration's delays in permitting the review of the classification of the Applicant's post to proceed.

2. Rejects all other pleas.

(Signatures)

Hubert THIERRY
President

Mayer GABAY
Vice-President

Victor YENYI OLUNGU
Member

Geneva, 7 August 1998

R. Maria VICIEN MILBURN
Executive Secretary